S.B. Civil Misc. Appeal No.961/2005

Smt. Sardari Devi and others.
vs.
Kesar Ram.

Date : 11.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. SL Jain, for the appellants.
Mr. Pradeep Shah, for the respondent.

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At the request of learned counsel for the parties, this appeal is heard and decided finally in view of the fact that it is apparent from the impugned order dated 8.8.2005 that the court below, while deciding the injunction application, has not decided the material question with respect to the claim of possession over the property in dispute of the rival parties. Not only this but the court below has not considered even the genuineness of the agreement for sale dated 22.5.1989. Virtually the Court has not recorded any finding and merely rejected the injunction application on the ground that since it is only an agreement to sale in favour of the plaintiffs/appellants and, therefore, they have not acquired any title over the property and rejected the injunction application.

While deciding the injunction application, the court below is required to decide all the questions of facts in relation to prima-facie case, balance of convenience and

irreparable loss. Not only that no point was formulated by the court below, but in the entire order of the court below, none of the said points have been decided by implication. In view of the above, the order dated 8.8.2005 is no order in the eye of law and also non-speaking order, hence, the same deserves to be set aside and the matter is required to be remanded back to the court below to decide the injunction application afresh and decide the issues – prima-facie case, balance of convenience and irreparable injury in relation to the alleged agreement to sale and delivery of possession, etc.

Consequently, this appeal is allowed, the order dated 8.8.2005 is set aside and the court below is requested to decide the injunction application within a period of one month from the date of receipt of the order of this court, which may be submitted by the appellants to the court below.

Till the injunction application under Order 39 Rules 1 and 2 CPC is decided by the court below, both the parties shall maintain status quo with respect to the property in dispute.

(PRAKASH TATIA), J.

S.Phophaliya